Order for possession which can be discharged at the end of three months provided the appellant by that time has paid off the arrears and the current rent. The Order given in the grounds of judgment, on the other hand, amounts to no more than an Order postponing possession for a period of three months as from the date of the giving of the Order. The Order given at the trial enabling the appellant to apply for discharge at the end of three months complies with the provisions of the English Act (The Rent and Mortgage Interest Restriction Act, 1923, section 4(2)), but I have some doubt as to whether such an Order enabling an application for discharge to be made at a future period can be granted under the wording of section 12(2) of our Ordinance. I think the correct Order to make in such a case is a conditional Order for possession, but suspended so long as the monthly or weekly rent and the rent in arrears is paid. I think this is the Order which the learned President intended to make and I think it is the Order which he was entitled to make, and ought to have made, on the facts of the case. I think, moreover, that that must be the Order which learned Counsel for the appellant contemplates to have been made; otherwise clearly there would have been no point in him appealing against the Order as it stands in the grounds of judgment of a postponement of possession for three months as from the 26th March, 1958, since such period of postponement had already elapsed before he lodged his appeal, and he was entitled to possession forthwith. I think, therefore, I must take the view that the Order which the learned President intended to make and which he must be deemed to have made was a conditional Order for the recovery of possession of the premises in question suspended for so long as the lawfully recoverable rent in arrear was paid and the monthly current rent continued to be paid as and when lawfully due. On the facts of the case I am of the opinion that that was an Order which he was perfectly entitled to make and, indeed, the Order which he ought to have made on the facts of the case. The words of Denning, L.J. in the case of *Bayman v. Rowlands* [5] (at p. 323) are relevant for consideration in this respect. He said:—

"If the tenant is in arrear, in these cases under the Rent Restrictions Acts the every day practice is to make an Order for possession, but to suspend it so long as the current weekly rent and a payment on account of the rent in arrear are paid in."

That is a practice which follows the principle laid down in the earlier English cases of *Dellenty v. Pellow*, [6] and *Sherrin v. Brand* [7] that where arrears are paid into Court or tendered before judgment, *prima facie* it is unreasonable to make an Order for possession. Each case, of course, must depend upon its own facts and there may well be cases — as, for example, where the tenant is repeatedly in arrears with his rent — where it is reasonable for the Court to make an unconditional Order for possession. The cross-appeal is accordingly dismissed.

In the result this appeal must accordingly be dismissed with costs, and the cross-appeal must also be dismissed with costs.

Appeal dismissed.

Solicitors: *Lim Cheng Ean; M. Abraham.*

TAY YEW HENG v. LEE THEAN LAI

[A.C.J. (Syed Sheh Barakbah J.) November 1, 1958]

[Ipoh — Civil Appeal No. 7 of 1958]

Landlord and Tenant — Ejectment — Control of Rent Ordinance, 1956, s.12(1)(m) — Appeal on point of law — Whether High Court can interfere with the Certificate of the Rent Assessment Board.

This was an appeal by the tenant against the decision of the Rent Assessment Board, Taiping, granting permission to the owner to apply to the Court for an order to eject him from premises No. 228, Kota Road, Taiping, subject to the conditions laid down in the Certificate issued under section 12(1)(m) of the Control of Rent Ordinance, 1956.

On September 20, 1955, Notice requiring abatement of nuisance was served by the Town Council on the owner requiring him to execute certain works to the premises as specified in the Notice. The owner thereupon wrote to the Town Council applying for permission to demolish the house for the purpose of rebuilding and submitted a plan, which was approved by the Town Council. On January 10, 1957, the owner received a letter from the Town Council enquiring when the house would be demolished and he replied that notice had been issued to the tenant to vacate the premises and that he would proceed to build as soon as the tenant vacated the house. The tenant failed to vacate and the application to the Rent Assessment Board was accordingly made.

Two questions arose in the appeal: (i) was there an appeal from the decision of the Board in this case; and (ii), if there was, could the Court interfere with the Certificate of the Board stating that the Board was satisfied that the owner intended to demolish the premises for the purpose of rebuilding, and that in the opinion of the Board it was in the public interest that the owner be permitted to do so.

Section 11(1) of the Control of Rent Ordinance enacts; "An appeal shall lie on a point of law from any decision of the Board."

Counsel for the tenant submitted that when there was a wrong finding of fact it then became a question

of law, and that in this case it was wrong for the Board to decide that it was in the public interest that the house should be demolished as the owner stated in his evidence "it would be better for me to build a new premises."

Held: (1) the record shows that there has been a misconception of the law and this has been responsible for the Board's decision in issuing the Certificate. Therefore an appeal lay to the High Court;

(2) section 12(1)(m) of the Control of Rent Ordinance, confers a discretion on the Rent Assessment Board both as regards the intention of the owner of premises to demolish the premises for the purpose of rebuilding and as its being in the public interest that he should be permitted to do so, but such discretion, must be exercised judicially. The evidence before the Board led to the conclusion that it was for the owners personal benefit and not in the public interest that the premises was to be demolished and rebuilt. That being so, it could not be said that the Board has exercised its discretion judicially.

Low Yeo Foong & Ors. v. Chop Thong Cheong, (2) distinguished.

Cases referred to:—

(1) *Edwards (Inspector of Taxes) v. Bairstow & Anor.*, (1955) 3 W.L.R. 410; (1956) A.C. 14.

(2) *Low Yeo Foong & Ors. v. Chop Thong Cheong*, (1954) M.L.J. 126.

CIVIL APPEAL from the decision of Rent Assessment Board.

C. O. Lim for the tenant.

A. S. Yeo for the owner.

Cur. Adv. Vult.

Syed Sheh Barakbah J.: This is an appeal by the respondent/appellant, Tay Yew Heng, against the decision of the Rent Assessment Board, Taiping, granting permission to the applicant/respondent, Lee Thean Lai, to apply to the Court for an order to eject him from premises No. 228, Kota Road, Taiping, subject to the conditions laid down in the Certificate issued under section 12(1)(m) of the Control of Rent Ordinance, 1956.

The applicant/respondent is the owner of the said premises and the respondent/appellant is the tenant. On 20th September, 1955, Notice requiring abatement of nuisance was served by the Town Council on the applicant/respondent requiring him to execute certain works to the premises as specified in the Notice. The applicant/respondent thereupon wrote to the Town Council applying for permission to demolish the house for the purpose of rebuilding and submitted a plan, which was approved by the Town Council. On 10th January, 1957, applicant/respondent received a letter from the Town Council enquiring when the house would be demolished and he replied that notice had been issued to the respondent/appellant to vacate the premises and that he would proceed to build as soon as the respondent/appellant vacated the house. Respondent/appellant failed to vacate and the application to the Rent Assessment Board was accordingly made.

There are two questions in this appeal which require consideration. Firstly, is there an appeal from the decision of the Board in this case; and secondly, if there is, can this Court interfere with the Certificate of the Board stating that the Board is satisfied that the applicant/respondent intends to demolish the premises for the purpose of rebuilding, and that in the opinion of the Board it is in the public interest that the applicant/respondent be permitted to do so.

With regard to the first question, section 11 (1) of the Control of Rent Ordinance, 1956, reads: "An appeal shall lie on a point of law from any decision of the Board." Mr. Lim, counsel for the respondent/appellant, submitted that where there was a wrong finding of fact it then became a question of law, and that in this case it was wrong for the Board to decide that it was in the public interest that the house should be demolished as the applicant/respondent stated in his evidence that "it would be better for me to build a new premises."

In reply Mr. Yeo said the question whether it was in the public interest or not was a question of fact for the Board to decide. It did not make it a point of law if the Board erred by giving a wrong decision on the fact. It was still a question of fact, and that in view of section 11(1) of the Ordinance no appeal lies to this Court.

Neither counsel, however, produced any authority in support of their submissions on this point. I have given the matter much thought and consideration, and the only authority which I have been able to find on the point, and which seems to support Mr. Lim's contention, is the case of *Edwards (Inspector of Taxes) v. Bairstow & Anor.* (1) In that case, in the course of his judgment at page 423, Lord Radcliffe said:—

"When the matter comes before the Court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything *ex facie* which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances,

too, the Court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law."

From the record, I am satisfied that there has been a misconception of the law and that this has been responsible for the Board's decision in issuing the Certificate. Therefore, in my judgment, an appeal lies to this Court.

We now come to the second question: Can the Court interfere with the Certificate of the Board?

In his submission, Mr. Lim stated that "public interest" was not pleaded and there was no mention of it at all by the applicant/respondent in his evidence. It was, according to the applicant/respondent himself, in his own interest to rebuild.

Mr. Yeo, in reply, referred to section 12(1)(m) of the Control of Rent Ordinance, 1956, which is as follows:—

"12. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

(m) where the President or Chairman of the Board has certified that the Board is satisfied that the owner of the premises intends to demolish them for the purpose of rebuilding and in its opinion it is in the public interest that he should be permitted so to do:

Provided that an order or judgment shall not be made or given under this paragraph unless the Court is satisfied that the owner of the premises has complied with any order or conditions which the Board may have seen fit to make or impose;"

He also quoted the case of *Low Yeo Foong & Ors. v. Chop Thong Cheong*[2]. That was a suit before the Court praying for an order of ejectment, and Buhagiar, J. held that the Court could not interfere with the Certificate of the Rent Assessment Board which was final and binding. In my view, the present case is distinguishable from the case I have just mentioned above, as in that case the Certificate of the Board was not challenged in that there was no appeal against it whereas here it is an appeal against the Certificate of the Board.

Now, section 12(1)(m) of the Control of Rent Ordinance, 1956, confers a discretion on the Rent Assessment Board both as regards the intention of the owner of premises to demolish the premises for the purpose of rebuilding and as its being in the public interest that he should be permitted to do so, but such discretion, in my opinion, must be exercised judicially.

It is quite clear from the record that before he was served with the notice to abate nuisance, the landlord never intended to demolish and rebuild the premises. He only made up his mind to do so apparently after the tenant had refused to carry out the repairs (see evidence of the tenant on page 7 of the record) and after ascertaining what it would cost him to carry out the repairs, and what it would cost him to demolish and rebuild, and finding that it would be to his advantage to do the latter. He admitted this before the Board when he said "it would be better for me to build a new premises."

Before issuing the Certificate, the Board visited the premises and came to the conclusion that the building was in a state of bad repair and that the locality, being in the central town area, would be improved by the construction of a new building and, therefore, in its opinion it was in the public interest that the applicant/respondent be permitted to demolish the premises and rebuild.

From a careful study of the evidence before the Board, I am led to the conclusion that it was for the applicant/respondent's personal benefit and not in the public interest that the premises was to be demolished and rebuilt. That being so, to my mind, it could not be said that the Board had exercised its discretion judicially.

I would, therefore, allow the appeal with costs.

Appeal allowed.

Solicitors: *Lim, Lim & Oon; A. S. Yeo.*

PUBLIC PROSECUTOR v. CHOY KOK KUAN & ORS.

[C.A. (Thomson C.J., Smith and Ong JJ.)
November 3, 1958]

[K.L. — F.M. Criminal Reference No. 2 of 1958]

Election — Use of motor vehicle for purposes of carrying electors to or from polls — Whether failure to register motor vehicle with Returning Officer an offence under reg.3 or reg.5 of the Legislative Council Elections (Control of Motor Vehicles) Regulations, 1955.

Criminal Law and Procedure — Charge — Breach of permissive conditions — No offence.

Courts Ordinance, 1948, s.34 — Object of — Observations on.

Regulation 3 of the Legislative Council Elections (Control of Motor Vehicles) Regulations, 1955, provides that a person shall not with a view to supporting or opposing the candidature of any individual as against any other individual use any motor vehicle for the purpose of the conveyance of electors to or from the poll. An exception to this prohibition is contained in reg. 4(b) which provides that nothing shall prevent a candidate at an election or some person on his behalf using the candidate's own private motor vehicle or a borrowed private motor vehicle to convey voters to or from the poll